

UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

SUMMARY ORDER

THIS SUMMARY ORDER WILL NOT BE PUBLISHED IN THE FEDERAL REPORTER AND MAY NOT BE CITED AS PRECEDENTIAL AUTHORITY TO THIS OR ANY OTHER COURT, BUT MAY BE CALLED TO THE ATTENTION OF THIS OR ANY OTHER COURT IN A SUBSEQUENT STAGE OF THIS CASE, IN A RELATED CASE, OR IN ANY CASE FOR PURPOSES OF COLLATERAL ESTOPPEL OR RES JUDICATA.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, in the City of New York, on the 12th day of September, two thousand and six.

PRESENT:

JON O. NEWMAN  
JOSÉ A. CABRANES  
ROBERT D. SACK  
*Circuit Judges.*

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SHKELQIM DUKA,

*Petitioner,*

-v.-

No. 05-3746-ag

ALBERTO GONZALES, Attorney General

*Respondent.*

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APPEARING FOR PETITIONER:

ALEKSANDER MILCH, Christophe &  
Associates, P.C., New York, NY, *for*  
*Petitioner*

APPEARING FOR RESPONDENT:

RICHARD D. HUMPHREY, Assistant United  
States Attorney (Stephen P. Sinnott, United  
States Attorney, *on the brief*), United States  
Attorney's Office for the Western District of  
Wisconsin, Madison, WI, *for Respondent*

Petition for review of an order of the Board of Immigration Appeals (“BIA”).

**UPON DUE CONSIDERATION, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** that the petition for review is **DENIED**.

Petitioner Shkelqim Duka, a native and citizen of Macedonia, seeks review of an order of the BIA, *see In re Duka*, File No. A 95 149 726 (BIA June 23, 2005), affirming by brief order the February 2, 2004 order of Immigration Judge Helen Sichel (“the IJ”) denying Duka’s requests for asylum, withholding of removal under the Immigration and Nationality Act, and relief under the United Nations Convention Against Torture (“CAT”),<sup>1</sup> *see In re Duka*, File No. A 95 149 726 (Immig. Ct. N.Y. City Feb. 2, 2004).

We assume the parties’ familiarity with the underlying facts and procedural history.

Judge Sichel found that Duka’s testimony was not sufficiently persuasive to meet his burden of proof and accordingly denied all of his requests for relief. In the context of this record, this finding clearly implies a rejection of the petitioner’s credibility. In his petition, Duka argues that the IJ’s finding that he failed to meet his burden was not supported by substantial evidence.

When the BIA affirms an IJ’s order with a brief order fully adopting the IJ’s decision, we review the IJ’s decision as the final agency determination. *See, e.g., Ming Xia Chen v. BIA*, 435 F.3d 141, 144 (2d Cir. 2006); *Chun Gao v. Gonzales*, 424 F.3d 122, 124 (2d Cir. 2005). In judicial review of orders of removal, “the administrative findings of fact are conclusive unless any reasonable adjudicator would be compelled to conclude to the contrary.” 8 U.S.C. § 1252(b)(4)(B). We are especially deferential when reviewing adverse credibility determinations. *See Zhou Yun Zhang v. INS*, 386 F.3d 66, 73-74 (2d Cir. 2004).

We conclude that, in the circumstances presented here, the IJ’s decision was based upon substantial evidence. Based on our review of the record, we cannot conclude that “any reasonable adjudicator would be compelled to conclude” that the IJ’s findings—which he based on Duka’s “evasive” testimonial demeanor in addition to inconsistencies in Duka’s statements at the hearing before the IJ and Duka’s failure to present certain evidence that might have supported his claims—were incorrect. We therefore decline to disturb the IJ’s finding that Duka’s testimony was insufficient to meet his burden of proof in an asylum proceeding.

Because Duka did not demonstrate the well-founded fear of persecution needed to qualify for asylum, he cannot qualify for withholding of removal. *See Abankwah v. INS*, 185 F.3d 18, 22 (2d Cir. 1999).

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<sup>1</sup> United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Dec. 10, 1984, S. Treaty Doc. No. 100-20 (1988), 1465 U.N.T.S. 85; *see also* 8 C.F.R. § 1208.16 (regulations implementing the CAT).

In addition, the findings the IJ relied upon in concluding that Duka did not qualify for asylum also provide substantial evidence for the IJ's conclusion that Duka does not qualify for relief under the CAT.

For the foregoing reasons, the petition for review is **DENIED**.

Having completed our review, any stay of removal that the Court previously granted in this petition is **VACATED**, and any pending motion for a stay of removal in this petition is **DENIED** as moot.

FOR THE COURT,  
Roseann B. MacKechnie, Clerk of Court

By \_\_\_\_\_